

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA GAS COMPANY for authority to update its gas revenue requirement and base rates. (U 904 G)	Application 02-12-027 (Filed December 20, 2002)
Application of SAN DIEGO GAS & ELECTRIC COMPANY for authority to update its gas and electric revenue requirement and base rates. (U 902-M)	Application 02-12-028 (Filed December 20, 2002)
Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Gas Company and San Diego Gas & Electric Company.	Investigation 03-03-016 (Filed March 13, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING THE
JANUARY 30, 2004 MOTION TO STRIKE PORTIONS OF
TURN'S OPENING BRIEFS**

On December 4, 2003 the assigned Administrative Law Judge (ALJ) issued a Ruling adopting a final schedule for the revenue requirement phase of this proceeding. All parties had been asked to submit to applicants by November 26, 2003 their best efforts final calculation of any proposed adjustment to applicants' request (their litigation positions) for test year 2004 for inclusion in the Comparison Exhibit. Parties were told "(A)ny party that is unable to finalize a proposed adjustment that would be argued in the brief, other than the adjustments already proposed in their witnesses' direct testimony, must provide an indicative estimate, with an adequate description, for inclusion in the

Comparison Exhibit.” (page 3.) The December 4, 2004 Ruling allowed parties to deviate from the 30-day requirement of Rule 51.2 and established deadlines for non-settling parties to file opposition to the settlements and for all parties to file briefs on their litigation positions as if there were no proposed settlements.

That directive came out of various discussions to set the schedule for filing briefs in Phase 1 and also dealt with the scheduling impacts of partial settlements proposed late in the evidentiary hearing process and ultimately filed with the Commission on December 19, 2003. Additionally, Opening Briefs by Settling Parties and Comments In Opposition to the Partial Settlement or Stipulation were due on January 20, 2004. Non-Settling Parties filed Opening Briefs on all litigation issues on February 4, 2004. Finally, Reply Briefs on all matters are due on February 19, 2004.

The Utility Reform Network (TURN) was a Settlement Party with Southern California Gas Company (SoCalGas) and filed a timely Opening (Litigation) Brief on SoCalGas’ application. On February 4, 2004 TURN filed an Opening Brief for San Diego Gas & Electric Company’s (SDG&E) application as a Non-settling Party. TURN submitted no issues for the SDG&E Comparison Exhibit, however the Utility Consumer Action Network¹ (UCAN) did provide data for SDG&E-related adjustments. The same consultant testified to several exhibits sponsored by TURN for SoCalGas and by UCAN for SDG&E. On their face, Exhibits 501, 502, 601 and 602 are captioned as on behalf of both TURN and UCAN.

¹ UCAN is not a Settling Party for SoCalGas and it did not file a separate Opening Brief on SoCalGas issues.

On January 30, 2004 SoCalGas and SDG&E filed a motion to strike 13 specific recommendations in TURN's Opening Brief on SoCalGas because TURN had not provided an indicative estimate, with an adequate description, for inclusion in the Comparison Exhibit. TURN acknowledges its omission in its Opening Brief and in its February 6, 2004 Response to the motion².

TURN responded that its error could be redressed without striking a portion of its brief. SoCalGas and SDG&E argue in the Motion, and a Reply filed on February 9, 2004, that the error is fatal to TURN's 13 issues in its Opening Brief on SoCalGas and also seeks in their Reply (page 2) to exclude TURN's entire Opening Brief on San Diego Gas & Electric's application. SoCalGas and SDG&E argue that TURN will have "two bites of the apple," in its Opening Briefs already filed and the subsequent Reply due on February 19, 2004, whereas they will have only one "Bite," in their Reply. Had TURN provided the notice of the 13 SoCalGas issues for the Comparison Exhibit, SoCalGas could have mounted a defense in its Opening Brief – a preemptive bite.

This proceeding was not filed and has not been conducted in compliance with the rate case processing plan (D.89-01-040; 30 CPUC2d 576). The Comparison Exhibits were intended to facilitate parties' preparation of briefs (and the draft decision preparation by the ALJ) and were not intended to strictly proscribe the range of issues to be resolved. The December 4 Ruling was actually issued after the due date for the Comparison Exhibit materials. With the rapidly changing schedule, due in part to the appearance of the partial settlements late in

² By Ruling on February 3, 2004 the ALJ reduced time for TURN to Respond to the Motion to February 6, 2004 and allowed SoCalGas and SDG&E until February 10, 2004 to Reply.

the evidentiary hearings, parties were asked to do many things quickly; comparison exhibit information, opposition to settlements, and opening litigation briefs. TURN's error is only an error of omission – SoCalGas and SDG&E do not suggest that they were “Sand-bagged” by a party intent on unfairly tricking them.

The Motion to Strike is denied. We will try to improve SoCalGas and SDG&E's single bite at the apple.

SoCalGas and SDG&E deserve reasonable time to respond to the 13 issues and so they may file a Supplemental Reply on March 1, 2004, without page limitation or reduction to their page limit for replying to all other issues. Their Reply on all other matters is due as scheduled on February 19, 2004. SoCalGas and SDG&E need not actually take this time and delay their Reply on these limited issues raised by TURN.

We will allow SDG&E the discretion to identify the same 13 issues, and any other TURN issue that was not identified by other parties for the SDG&E Comparison Exhibit, for inclusion in the Supplemental Reply.

IT IS RULED that:

1. The Motion to Strike portions of The Utility Reform Network's (TURN) Opening (Litigation) Brief in Application (A.) 02-12-027 is denied.
2. The Motion to Strike all of TURN's Opening (Litigation) Brief in A.02-12-028 is denied.
3. Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) may file a Supplemental Reply on March 1, 2004 on the 13 issues identified for SoCalGas in the Motion to Strike and may also defer a reply on issues raised by TURN for SDG&E that were not identified by any other party for inclusion in the SDG&E Comparison Exhibit.

4. In accordance with the electronic service protocols adopted in this proceeding no hard copy of this ruling will be served on parties.

Dated February 11, 2004, at San Francisco, California.

/s/ DOUGLAS M. LONG

Douglas M. Long
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Denying the January 30, 2004 Motion to Strike Portions of Turn's Opening Briefs on all parties of record in this proceeding or their attorneys of record.

Dated February 11, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.